



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/150549

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on August 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for Kinship Care (KC) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Stephanie Purpero, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On May 14, 2013, the Petitioner submitted an application for KC benefits for her granddaughter JM.
3. On May 22, 2013, the agency assessor conducted a home visit.

4. JM is 4 years old and has lived with the Petitioner for approximately 6 months. JM has had no contact with her father for over 6 months. She has daily contact with her mother MA. There is no reported AODA, mental health, CPS or criminal history for MA. MA has 2 other children in her care. The Petitioner cares for JM because MA is unemployed.
5. On June 14, 2013, the agency issued a Notice of NonApproval of KC to the Petitioner finding JM does not meet the criteria of a child in need of protection or services and is not likely to meet that criteria in the future.
6. On July 8, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the petitioner is a §48.977 guardian. The Petitioner did provide evidence of a Chapter 54 guardianship of both children but such guardianship is not dispositive of a finding of children in need of protection and services.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §48.57(3m)(am) must be met. The pertinent “conditions specified in par. (am)” here are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interest of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

Id., (3m)(am)1,2.

The Petitioner’s residence is suitable for JM. The Petitioner takes good care of her and has created a safe and stable environment for her. Accordingly, the placement satisfies the “need for the child’s placement” criterion described at Wis. Stats. §48.57(3m)(am)1. However, the agency’s basis for discontinuance was that JM does not meet one of the criteria at Wis. Stat. §48.13 and therefore does not meet the condition in §48.57(3m)(am)2.

The only possibly pertinent criteria in §48.13 is as follows:

48.13 Jurisdiction over children alleged to be in need of protection or services. Except as provided in s. 48.028 (3), the court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and: . . .

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

...

Wis. Stats. §48.13.

The Petitioner testified that MA cannot care for JM because she is unemployed and therefore financially unable to provide for JM’s needs. MA has no issues relating to drug or alcohol abuse, mental health, child protective services or criminal history. She currently cares for two other minor children. She receives FoodShare and BadgerCare benefits for herself and the two children.

There is no evidence that JM meets the criteria under § 48.13 as a child in need of protection or at risk. Financial need or poverty of a child’s parent are not sufficient to meet the criteria. Therefore, I must conclude that the agency properly denied KC benefits to the Petitioner.

CONCLUSIONS OF LAW

The agency properly denied KC benefits to the Petitioner.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 22, 2013.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care